



June 20, 2012

Ms. Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp.
Petition for Rulemaking to Reform Regulation of Incumbent Local
Exchange Carrier Rates for Interstate Special Access Services, WC
Docket No. 05-25, RM-10593

Dear Ms. Dortch:

On June 18, the undersigned met with Nicholas Degani, Legal Advisor to Commissioner Pai, on behalf of the Ad Hoc Telecommunications Users Committee ("Ad Hoc"). We discussed the information and analysis contained in Ad Hoc's written *ex parte* presentation filed with the Commission on June 15.¹

In addition, we discussed the following points.

Early complaints about special access pricing cited the grossly excessive earnings reported by the ILECs in their ARMIS filings with the Commission. The carriers addressed this issue by successfully petitioning the Commission to eliminate the ARMIS reporting requirement. Carriers have since argued that earnings data is not probative of the issues in this rulemaking because the Commission's cost accounting rules forced them to overstate their actual profit levels. We discussed Commission actions that forced carriers to understate their earnings. In particular, we referred to the Commission order directing carriers to include their residential broadband costs, but not the associated revenues, in calculating the earnings from their regulated services. The Commission took that action in *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, 20 FCC Rcd. 14853 (2005). The Commission acknowledged at paragraph 137 that its action would understate the carriers' actual earnings:

We note that our decision to treat the non-common carrier provision of broadband Internet access transmission as a regulated activity under

¹ Letter from Colleen Boothby, Levine, Blaszak, Block & Boothby, LLP, Counsel to Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 05-25; RM 10593 (filed June 15, 2012).



part 64 will affect the results of computations of the rate of return earned on interstate Title II services. This is not a matter of practical concern with respect to most incumbent LECs regulated under the *CALLS* plan or price caps, because earnings determinations are not used in determining their price cap rates. In the event that an earnings determination is needed for some ratemaking purpose, the affected carrier will have to propose a way of removing the costs of any non-Title II services from the computation.

Id. at para. 137. The Order did not address the impact of its decision on any Commission investigation of whether *non-price* caps rates are unjust and unreasonable because they are set so high as to produce excessive profits, like the investigation in the instant docket.

We discussed whether the FCC has any evidence that would support Ad Hoc's claim that ILECs have used the "pricing flexibility" rules to increase their prices even though the "pricing flexibility" rules supposedly de-regulate prices only in areas with sufficient competition to discipline prices. The evidence of the carriers' price increases in "pricing flexibility" areas is contained in the carriers' own public tariff filings with this Commission. A compilation of the relevant filings was recently provided to the Commission by tw telecom inc. ("tw telecom") in an *ex parte* presentation.² Rather than burden the record unnecessarily with a repetition of that information, Ad Hoc hereby references the tw telecom letter.

In addition, Ad Hoc notes that the Commission raises special access rates every time it grants a new "pricing flexibility" petition like the pending petition of AT&T.³ This is because, under the FCC's rules, ILECs obtain "pricing flexibility" for particular metropolitan areas. The ILECs created in their tariffs separate rate categories for those areas.⁴ The price schedules for "pricing flexibility" areas now contain rates that are substantially higher than those in the price schedules for areas remaining under the FCC's "price caps" regulations.⁵ Moreover, the gap between the higher "pricing flexibility" rate schedule and the "price caps" rate schedule has widened over time, in part because the ILECs have simply filed increases in their "pricing flexibility" schedules⁶ and in part because "price caps" rates were based for a time on general

² Letter from Thomas Jones, Willkie, Farr, & Gallagher, LLP, Counsel to tw telecom, inc., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 05-25; RM 10593 (filed June 18, 2012) ("*tw June 18 Letter*") at Appendix B.

³ See Pacific Bell Telephone Company Petition For Pricing Flexibility Under Section 69.727 of the Commission's Rules, WCB/Pricing File No. 12-04, Southwestern Bell Telephone Company Petition For Pricing Flexibility Under Section 69.727 of the Commission's Rules, WCB/Pricing File No. 12-05 (filed Jan. 20, 2012).

⁴ See, e.g., AT&T's Pacific Bell Telephone Company Tariff F.C.C. No. 1, 7th Revised Page 31-3, § 31.2.A and B, attached hereto.

⁵ Cf. AT&T's Pacific Bell Telephone Company Tariff F.C.C. No. 1, 19th Revised Page 7-172, § 7.5.9(A) and Pacific Bell Telephone Company Tariff F.C.C. No. 1, 1st Revised Page 31-57.3, § 31.5.2.7.1 (A), attached hereto.

⁶ *tw June 18 Letter*, note 2, *supra*.



economic trends in the telecommunications industry which pushed prices down. As a result, every "pricing flexibility" petition granted by the FCC raises prices for customers in the metropolitan areas covered by the petition, because the customer is forced off of the "price caps" rate schedule and onto the higher "pricing flexibility" schedule instead.

In this context, we observed that the only effect of granting AT&T's pending pricing flexibility petition⁷ for the San Francisco/Oakland area is to give AT&T the ability to raise its special access prices for that area. AT&T already sought and obtained "Phase I" flexibility which allows it to deviate from its generally available tariff offering and respond to competition (if any) with negotiated contracts, volume discount offerings, terms discounts, etc.

Please feel free to contact me with any questions or concerns regarding this filing.

Sincerely,

A handwritten signature in dark ink that reads "Colleen Boothby". The signature is written in a cursive, flowing style.

Colleen Boothby
Counsel, Ad Hoc Telecommunications Users
Committee

Cc: Nicholas Alexander
Nicholas Degani
Priscilla Delgado Argeris
Sharon Gillett
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Christine D. Kurth
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Andrew Mulitz
Paul Murray
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Daniel Shiman

⁷ See note 3, *supra*.

ACCESS SERVICE

31. Metropolitan Statistical Area Access Services31.1 General Description

- (A) This section of the tariff provides the regulations, rates and terms and conditions that apply to telecommunications services provided by the Telephone Company in the Metropolitan Statistical Areas (MSAs) in which the Telephone Company has received Phase II pricing flexibility pursuant to Subpart H of Part 69 of the Commission's Rules. MSAs are divided into the categories below:

(1) Full Service MSAs

Full Service Relief MSAs are those MSAs which qualified for Phase II pricing flexibility for all elements of service, i.e., local channels (channel terminations) between LEC end offices and customer (end user) premises; entrance facilities; dedicated interoffice facilities; local channels (channel terminations) between an interexchange carrier's point of presence and a serving wire center. The Full Service Relief MSAs are set forth in Section 31.2(A), following.

(2) Limited Service MSAs

Limited Service Relief MSAs are those MSAs that qualified for Phase II pricing flexibility for all elements of service except local channels (channel terminations) between a LEC end office and a customer (end user) premise. The Limited Service Relief MSAs are set forth in Section 31.2(B), following.

- (B) The services provided in MSAs pursuant to this section of the tariff are set forth in Section 31.3, following. These services are comparable to the SWA Dedicated Transport Services in Sections 6.8.2(A), 6.8.2(B), 6.8.2(G)(1), 6.8.2(K), and the Special Access Services in Sections 7 and 20⁽¹⁾. The general regulations, service descriptions, and rate regulations for the SWA Dedicated Transport Services in Section 6 and the Special Access Services in Sections 7 and 20⁽¹⁾ are also applicable to the services specified in this section, except as provided below. (D)

An exception in 31.4(F) applies for term pricing plans.

- (C) Unless otherwise provided for in this section, regulations set forth in Sections 1, 2, 5, and 13 are also applicable. (D)

⁽¹⁾ Material in this Section has been de-tariffed as required by the Commission upon use of the forbearance relief pursuant to FCC Memorandum Opinion and Order No. 07-180, released October 12, 2007. Terms and Conditions associated with de-tariffed services are available at www.att.com/guidebook.

ACCESS SERVICE

31. Metropolitan Statistical Area Access Services (Cont'd)31.2 Metropolitan Statistical Areas

A. Full Service Relief MSAs are listed below:

State	MSA
California	San Jose**
California	Fresno
California	Los Angeles/Long Beach***

B. Limited Service Relief MSAs are listed below:

State	MSA
California	Bakersfield
California	Modesto
California	Oxnard/Ventura
California	Sacramento
California	San Diego
California	San Francisco/Oakland
California	Santa Rosa
California	Stockton

31.3 Services Available in an MSA

The following services are available in MSAs with Full and Limited Service Relief:

Special Access
Metallic Service
Telegraph Grade Service
Voice Grade Service
Program Audio Service
Video Service
Generic Digital Transport Service
High Capacity Service
SONET Ring and Access Services ⁽¹⁾
Broadband Circuit Service (BCS)*

(C)

* This option is limited to existing customers at existing locations as of January 11, 2002.

** This MSA previously qualified for Limited Service Relief and is now qualified for Full Service Relief per the April 11, 2002 approval of Pacific Bell's most recent Price Flex petition, Memorandum Opinion and Order, CCB/CPD Nos. 01-33 and 02-03, DA 02-823.

***This MSA previously qualified for Limited Service Relief and is now qualified for Full Service Relief per the May 15, 2003 approval of Pacific Bell's most recent Price Flex petition, Memorandum Opinion and Order, WCB/Pricing No. 03-8, DA 03-1721.

⁽¹⁾ Effective 01/03/06, SONET Ring and Access Service is limited to existing customers at existing locations except where spare capacity exists; customers may add additional locations on existing rings. New SONET ring services will be provided via Dedicated SONET Ring Service.(N)
(N)
(N)
(N)

(This page filed under Transmittal No. 269)

ACCESS SERVICE

7. Special Access Service (Cont'd)7.5 Rates and Charges (Cont'd)7.5.9 High Capacity Service

	<u>USOC</u>	<u>Monthly Rates</u>	<u>Nonrecurring Charges</u>	
			<u>1st</u>	<u>Add'l</u>
(A) <u>Channel Termination</u>				
- Per point of termination				
(1) - 1.544 Mbps				
Zone 1	TMECS/TMELB	\$130.00 (I)	\$900.00	\$900.00
Zone 2	TMECS/TMELB	137.00 (I)	900.00	900.00
Zone 3	TMECS/TMELB	145.25 (I)	900.00	900.00
- DS1 Fiber Advantage sm (1)				
Month to Month	FAMCP/FAMCL FAMPP/FAMPL	\$160.00	\$500.00	\$200.00
1 Year Plan	FAMCP/FAMCL FA1+P/FA1+L	120.00	500.00	200.00
3 Year Plan	FAMCP/FAMCL FA3+P/FA3+L	90.00	600.00#	300.00#
5 Year Plan	FAMCP/FAMCL FA5+P/FA5+L	80.00	600.00#	300.00#
- 3.152 Mbps	TWT++	ICB*	ICB*	ICB*
- 6.312 Mbps	TWT++	ICB*	ICB*	ICB*

* ICB rates and charges are filed in 7.6 following.

Nonrecurring charges associated with the installation of Fiber Advantagesm Services under a 3 or 5 year term plan are waived.

(1) Effective May 17, 2003, Fiber Advantagesm DS1 Rate Stability Payment Plan will no longer be available to new customers. There will be no change to existing customers. Refer to section 7.4.11(A) for conversion options.

Rates contained in this transmittal are subject to subsequent adjustment, effective retrospectively, in the event the Commission or a court subsequently authorizes Pacific to correct its rates pursuant to pending motions, or petitions for reconsideration or waiver, or in the event of any other adjustment to an order of the Commission or a court.

(This page filed under Transmittal No. 236)

Issued: June 16, 2005

Effective: July 1, 2005

Four AT&T Plaza, Dallas, Texas 75202

ACCESS SERVICE

31. Metropolitan Statistical Area Access Services (Cont'd)31.5 Rates and Charges (Cont'd)31.5.2 Special Access Service (Cont'd)31.5.2.7.1 High Capacity Service

Restored rates on this page effective July 1, 2010.

	USOC	Monthly Rates	Nonrecurring Charges	
			1st	Add'l
(A) Channel Termination				
- Per point of termination				
(1) - 1.544 Mbps				
Zone 1	TMECS/TMELB	\$152.50 ⁽¹⁾	\$900.00	\$900.00 (T)
Zone 2	TMECS/TMELB	170.00 ⁽¹⁾	900.00	900.00
Zone 3	TMECS/TMELB	180.00 ⁽¹⁾	900.00	900.00
- DS1 Fiber Advantage SM ⁽²⁾				
Month to Month	FAMCP/FAMCL FAMPP/FAMPL	\$175.00 ⁽¹⁾	\$600.00 ⁽¹⁾	\$300.00 ⁽¹⁾
1 Year Plan	FAMCP/FAMCL FA1+P/FA1+L	135.00 ⁽¹⁾	600.00 ⁽¹⁾	300.00 ⁽¹⁾
3 Year Plan	FAMCP/FAMCL FA3+P/FA3+L	105.00 ⁽¹⁾	600.00 ⁽³⁾	300.00 ⁽³⁾
5 Year Plan	FAMCP/FAMCL FA5+P/FA5+L	95.00 ⁽¹⁾	600.00 ⁽³⁾	300.00 ⁽³⁾

⁽¹⁾This rate was previously in effect through April 4, 2007. Some rates were temporarily reduced from April 5, 2007 through June 30, 2010, pursuant to AT&T/BellSouth Merger Commitment No. 6 of the F.C.C. Memorandum Opinion and Order, WC Docket No. 06-74, in The Matter of AT&T, Inc. and BellSouth Corporation Application for Transfer of Control. The temporarily reduced rates are found in Section 31.5.2.7.

⁽²⁾Effective May 17, 2003, Fiber AdvantageSM DS1 Rate Stability Payment Plan will no longer be available to new customers. There will be no change to existing customers. Refer to Section 7.4.11(A) for conversion options.

⁽³⁾Nonrecurring charges associated with the installation of Fiber AdvantageSM Services under a 3 or 5 year term plan are waived.

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Effective: February 26, 2010

Four AT&T Plaza, Dallas, Texas 75202